APPENDIX A

The New Mexico Contractors Bonding Law and Agreement Cash Collateral Assignment. Section 67-16-21, N.M.S.A., 1953 Compilation (1966 Interim Supplement)

"67-16-21. Contractors' bonds—Agreement of cash collateral assignment.—A. Every person licensed under the provisions of the Contractors' License Law and every applicant for a contractors' license shall file with the contractor's license board, on his behalf, or on behalf of his business association or corporation:

(1) a surety bond acceptable to the board and underwritten by a corporate surety authorized to transact business in New Mexico. The board, in its discretion, may accept a personal surety bond underwritten by two personal sureties, each of whom own real property within the state having a net value to them of at least double the amount of the required bond; or

(2) an agreement of cash collateral assignment, executed with a state or national bank or federally insured savings association authorized to do business in New Mexico, as trustee, in a form prescribed by the board. Interest if any accumulating on said cash collateral assignment shall accrue to the licensee.

B. The bond, agreement of cash collateral assignment and all personal sureties shall be approved by the board, and a personal surety or underwriter shall not appear on more than one personal surety bond unless approved by the board. The form for the personal surety bond shall be prescribed by the board.

C. A licensee or applicant having a gross annual business in New Mexico of five thousand dollars ($5,000) or less shall be excluded from the bond provisions of this act. A licensee or applicant having a gross annual business in New Mexico of five thousand and one dollars ($5,001) to ten thousand dollars ($10,000) shall file a bond in the penal

sum of, or an agreement of cash collateral assignment in the amount of, two hundred fifty dollars ($250). A licensee or applicant having a gross annual business in New Mexico of ten thousand and one dollars ($10,001) to twenty-five thousand dollars ($25,000) shall file a bond in the penal sum of, or an agreement of cash collateral assignment in the amount of, five hundred dollars ($500). A licensee or applicant having a gross annual business in New Mexico of twenty-five thousand and one dollars ($25,001) to one hundred thousand dollars ($100,000) shall file a bond in the penal sum of, or an agreement of cash collateral assignment in the amount of, one thousand dollars ($1,000). A licensee or applicant having a gross annual business in New Mexico in excess of one hundred thousand dollars ($100,000) shall file a bond in the penal sum of, or an agreement of cash collateral assignment in the amount of, five thousand dollars ($5,000).

D. A contractor solely engaged in the business of drilling water wells, who has posted a water-well drilling bond with the office of the state engineer of New Mexico, shall be excluded from the bond provisions of this act.

E. The bond or agreement of cash collateral assignment shall be for the benefit of:

(1) any person damaged as a result of a violation by a licensee or applicant of the Contractors' License Law;

(2) Any person damaged as a result of a violation by a licensee of the Uniform Building Code as adopted by the contractors' license board;

(3) any person damaged by a fraud of a licensee or applicant, which fraud has been established in a court of competent jurisdiction, in the execution or performance of a contract. For the purpose of this subsection, fraud shall include, but not be limited to, the acceptance of payment on a contract without paying to material suppliers a proportionate amount of the payment; and

(4) any employee of the licensee damaged by the licensee's failure to pay wages or fringe benefits.

F. The bond may be a continuous-form bond, but shall be written for one year with a renewal notification to the contractors' license board by June 30 of each year. It shall be a condition of the bond that the total aggregate liability of the surety for all claims shall be limited to the face amount of the bond irrespective of the number of years the bond is in force.

G. The bond or agreement of cash collateral assignment posted by a licensee or applicant shall be in a form to provide thirty days' written notice of a cancellation to the contractors' license board.

H. In the event a licensee fails to post and maintain a valid and enforceable bond or agreement of cash collateral assignment in accordance with the provisions of this section, the board shall revoke or suspend his contractor's license; and in the event an applicant fails to post bond or an agreement of cash collateral assignment in accordance with the provisions of this section, the board shall refuse to issue him a contractor's license.

I. No legal action may be maintained on the contractors' license bond or agreement of cash collateral assignment unless such action is commenced within twelve months after the cause accrues or within twelve months after a substantial completion of the project whichever is earlier."